

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA §
§
§
V. § CASE NO. 4:07cr169
§ (Judge Crone)
JACK ULRIC SWEESY §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is Defendant's Motion to Modify Restitution Payment (Dkt. #46). On March 28, 2012, this motion was referred to the undersigned for determination or recommended disposition (Dkt. #47). Having considered the motion, the Court is of the opinion that such motion should be denied without prejudice.

Defendant is currently a prisoner at the Bureau of Prisons FCI Big Spring, Texas, Unit. Defendant is a willing participant in the Inmate Financial Responsibility Plan ("IFRP"). Under IFRP, the BOP garnishes Defendant's income to collect the restitution owed by Defendant. Defendant complains that the BOP at FCI Big Spring has continued to increase his quarterly payment schedule to exorbitant levels. Defendant asks this Court to modify his restitution schedule under the IFRP.

This Court lacks jurisdiction to consider Defendant's request. Any challenge to the BOP's administration of an IFRP schedule must be via a 28 U.S.C. § 2241 petition in the district where the prisoner is incarcerated after he has exhausted all administrative remedies. *See United States v. Cabrera-Ruiz*, No. 11-40924, 2012 WL 89307, at *1 (5th Cir. Jan. 10, 2012); *United States v. Diggs*, 578 F.3d 318, 319–20 (5th Cir. 2009).

Defendant also asserts that the District Court may not delegate discretion to the BOP to set a payment schedule. No error occurred, because the Court included a restitution schedule in the judgment (Dkt. #43, Amended Judgment, p. 30). *See United States v. Lopez*, 434 F. App'x 369 (5th

Cir. 2011).

RECOMMENDATION

The Court recommends that Defendant's Motion to Modify Restitution Payment (Dkt. #46) be **DENIED**. After Defendant exhausts his administrative remedies, he may file a 28 U.S.C. § 2241 petition in the Northern District of Texas.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(c).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 3rd day of April, 2012.



AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE